

05-CV-0329 GKF-SAJ

Plaintiffs.

V.

Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Aviagen, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc.,

**THE CARGILL DEFENDANTS’  
MOTION FOR CLARIFICATION/  
RECONSIDERATION**

Defendants.

Defendants Cargill, Inc. (“Cargill”) and Cargill Turkey Production, LLC (“CTP”) (together, the “Cargill Defendants”) respectfully move this Court to clarify that its July 6, 2007 Order (“July 6 Order” or “Order”) does not require the Cargill Defendants to produce documents that have nothing to do with the land application of poultry litter in the Illinois River Watershed (“IRW”). As explained below, Plaintiffs’ overbroad interpretation of the July 6 Order would require the Cargill Defendants to search the globe for information that is, at best, only tangentially related to the issues involved in this litigation. It could also impose financial and human resource burdens on the Cargill Defendants that far outweigh the potential benefits of any information gathered in such a search.

The Cargill Defendants also request that, to the extent that the July 6 Order requires the Cargill Defendants to produce documents related to the allegedly detrimental environmental effects of land application of poultry litter **globally**, this Court reconsider its ruling and order the Cargill Defendants to produce only documents related to the allegedly detrimental environmental effects of land application of poultry litter in the United States.

### **BACKGROUND**

On April 6, 2007, Plaintiffs filed a Motion to Compel the Cargill Defendants to respond to Plaintiffs' July 10, 2006 Requests for Production of Documents. (Docket No. 1120.) Among other things, the Motion asked the Court to require the Cargill Defendants to produce responsive documents without temporal or geographic limitation. (*Id.*) The Cargill Defendants responded to that Motion to Compel on April 26, 2007, emphasizing that even if Plaintiffs were able to avoid the statute of limitations difficulties implicated by some of their claims, Plaintiffs' requests were still overbroad as to both time and scope. (Docket No. 1126-1.) The Cargill Defendants noted that they operate on a world-wide basis and that limitless discovery as to the Cargill Defendants' global operations was not justified. (Docket No. 1136 at 12-13.) In their Reply ("May 10 Reply"), Plaintiffs took the position that the Cargill Defendants would not be burdened with searching all of their units and facilities world-wide because not all of these units and facilities have "a connection or relevance to the poultry industry and its environmental impacts." (Docket No. 1147 at 7.)

On July 6, 2007, this Court found that it was unable to determine the validity of Plaintiffs' arguments without extensive briefing and testimony on the issues presented by the parties. (Docket No. 1207 at 2-3.) To avoid such additional briefing and testimony, the Court ordered the parties to meet and confer before July 20, 2007 to resolve all remaining issues

presented by the Motion to Compel. (Id. at 3) The Court further ordered the Cargill Defendants to “produce documents relevant to their corporate knowledge of detriment to the environment from application of poultry waste to the ground without any limit as to the date of the documents or the geographical location to which they relate.” (Id.) However, the Court did not require the Cargill Defendants to produce data from anywhere other than the IRW. (Id.)

Despite repeated efforts, the parties have not been able to see eye to eye regarding the extent of the Cargill Defendants’ obligations under the Court’s July 6 Order with respect to the geographic scope of their document production, 30(b)(6) depositions, or otherwise. In fact, contrary to the representations made in their May 10 Reply, Plaintiffs have indicated an intent to pursue information regarding such far-reaching topics as the environmental effects of phosphorus mining and the use of commercial fertilizer, a human-made material that is chemically distinct from poultry litter. (Ex. 1: R. Garren E-mail of February 7, 2007; Ex. 2: Mann Aff. at ¶ 7; see also Docket No. 1271 at 6.)

On August 1, the parties held a meet and confer to discuss the Cargill Defendants’ concerns about the Plaintiffs’ Rule 30(b)(6) Deposition Notice served on July 16, 2007. (Ex. 3: D. Mann Letter of August 6, 2007.) During that August 1 meet and confer, Plaintiffs confirmed that they interpret the Court’s July 6 Order to require the Cargill Defendants to produce documents and witnesses capable of testifying about the allegedly detrimental environmental effects of poultry litter and its constituents: (a) regardless of whether the environmental effects arise in the context of land application; (b) regardless of the type of poultry litter involved (turkey, chicken, or otherwise); (c) but with regard to each individual constituent (e.g., phosphates, arsenic, copper, zinc, etc.) of poultry litter at issue in this litigation, even where the constituents’ environmental effects have no relation to the land application of poultry litter (e.g.

commercial fertilizer). (Id.) Plaintiffs have further indicated that they expect the Cargill Defendants to produce these documents even if they are related to activities conducted in areas outside the United States. (Id.) In contrast, the Cargill Defendants read the Court's July 6 Order as requiring them to produce documents related to the allegedly detrimental environmental effects of land application of poultry litter in the United States. The Cargill Defendants also read the Court's Order to encompass documents possessed by the named defendants (Cargill, Inc. and Cargill Turkey Production, LLC), which actually maintained operations in the IRW, and not the numerous affiliated corporate entities that exist throughout the world. In light of the serious implications and burdens that Plaintiffs' vast construction threatens for the Cargill Defendants' discovery obligations, the Cargill Defendants ask this Court to clarify its July 6 Order.

### **ARGUMENT**

#### **A. Plaintiffs' Interpretation of the July 6 Order Should Be Rejected Because it Requires Extraordinary Efforts to Obtain Irrelevant Information.**

Federal Rule of Civil Procedure 26(b)(1) states that parties "may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." As the Supreme Court has explained, "Discovery of matters not reasonably calculated to lead to the discovery of admissible evidence is not within the scope of Rule 26(b)(1)." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Although the Federal Rules contemplate liberal discovery, and relevancy is broadly construed, "discovery . . . has ultimate and necessary boundaries." See id.; Steil v. Humana Kansas City, Inc., 197 F.R.D. 442, 445 (D. Kan. 2000). Where the relevance of discovery is not readily apparent, the party seeking the discovery has the burden to show the relevancy of the discovery request. Steil, 197 F.R.D. at 445. However, even where the discovery sought appears relevant, the responding party may avoid discovery where it can show that the requested discovery does not come within the scope of relevance contemplated

by Rule 26(b)(1), or that the requested discovery is of such marginal relevance that the burden occasioned by discovery would outweigh the ordinary presumption in favor of disclosure. Pulsecard, Inc. v. Discover Card Servs., Inc., 168 F.R.D. 295, 309 (D. Kan. 1996).

Plaintiffs have not met their burden of demonstrating that any of the discovery they contend the July 6 Order requires is relevant to any of the issues in this case. Plaintiffs contend that the Court's July 6 Order requires the Cargill Defendants to produce documents that are not reasonably related to the allegedly detrimental environmental effects of land application of poultry litter, and to produce documents from **any other country in the world** in which the Cargill Defendants and their affiliated companies do business, including such remote locales as Nicaragua, Brazil, and Thailand. (See Ex. 2: Mann Aff. at ¶ 11; see also Cargill Worldwide, <http://www.cargill.com/worldwide/index.htm>.) Plaintiffs' interpretation is overreaching and contrary to Rule 26(b).

The Cargill Defendants' domestic and international operations have numerous significant differences. For example, with respect to poultry production, the Cargill Defendants are currently engaged in turkey production in the United States, but only in chicken production internationally. (Ex. 2: Mann Aff. at ¶¶ 8, 10.) Further, environmental conditions (including climate and soil conditions) and human factors differ significantly from country to country. Industry practices, laws, and regulations are designed to serve different purposes and goals in different locales. As the Court recognized in its July 6 Order, extensive evidence and expert testimony would be required to determine what, if any, relevance this global information might have on a location-by-location basis. (Docket No. 1207 at 2.) In sum, information regarding the Cargill Defendants' operations in remote countries is not "reasonably calculated to the discovery of admissible evidence" in this case without further evidentiary showings by the Plaintiffs.

Plaintiffs' construction of the geographical scope of the July 6 Order is particularly troubling when coupled with Plaintiffs' interpretation of the Order's substantive scope. Contrary to the representations made in their May 10 Reply, Plaintiffs now assert that the July 6 Order requires the Cargill Defendants to produce documents relating to the allegedly detrimental environmental effects of poultry litter regardless of whether it is in the context of land application, regardless of the type of poultry litter at issue, and with respect to each individual constituent of poultry litter at issue in this litigation, even where the constituent's environmental effects have no relation to the land application of poultry litter. (Ex. 3: D. Mann Letter of August 6, 2007.)

Without limitations as to these items, the Cargill Defendants could be required to expend extraordinary resources and endure a tremendous burden to gather information that has no relation at all to the issue in this lawsuit: the land application of turkey litter in the IRW. The Cargill Defendants and their affiliated companies are involved in a large array of business operations around the world, including (but not limited to) risk management and financial solutions, animal nutrition, farm services, salt, energy, and sweeteners. (See Ex. 2: Mann Aff. at ¶ 12; see also Cargill Products & Services, <http://www.cargill.com/products/index.htm>). The constituents Plaintiffs claim are present in poultry litter include phosphorous, phosphorous compounds, nitrogen, nitrogen compounds, arsenic, arsenic compounds, zinc, zinc compounds, copper, copper compounds, hormones, and microbial pathogens. (Docket No. 18 at 16-17). Plaintiffs' interpretation of the July 6 Order would require the Cargill Defendants to produce information in all of these contexts, with regard to all of these constituents, in any country in the world in which they have any operations of any kind.

By way of example, under the Plaintiffs' interpretation of the July 6 Order, the Cargill Defendants must produce information regarding the allegedly detrimental environmental effects of phosphates from soybean facility in Egypt, zinc from food ingredient facility in Morocco, or copper from a palm oil facility in Indonesia.<sup>1</sup> (See Ex. 2: Mann Aff. at ¶ 12; see also Cargill Worldwide, <http://www.cargill.com/worldwide/index.htm>.) Plaintiffs have even gone so far to suggest that the July 6 Order requires the Cargill Defendants to produce documents related to the effects of commercially produced fertilizer, an entirely different product from naturally occurring poultry litter, simply because commercial fertilizer contains phosphorus. (Ex. 2: Mann Aff. at ¶ 7; see also Docket No. 1271 at 6.) Plaintiffs have not suggested, much less demonstrated, the relevance of any of this information to the issues in the instant case.

Further, the burden that Plaintiffs' interpretation of the July 6 Order would place on the Cargill Defendants greatly outweighs any potential relevance of the information sought. Taken as a group, Plaintiffs' interpretations of the July 6 Order would place an extraordinary burden on the Cargill Defendants. The Cargill Defendants have facilities in over 66 countries worldwide. (Willardsen Aff. at ¶ 8, Docket No. 1136, Ex. 2.; Cargill About Us, <http://www.cargill.com/about/index.htm>.) Within those 66 countries, the Cargill Defendants have over 90 business units. (Willardsen Aff. at ¶ 8, Docket No. 1136, Ex. 2.) Many documents kept at these facilities are not written in English. The review and production of that information would require first the Cargill Defendants and ultimately the Court and all the parties to use translators to interpret the information. Even a review of the documents from all of these countries and facilities could take many months, at tremendous cost, and a complete production would add even more to that burden. In light of the immense scope of the information

---

<sup>1</sup> The Cargill Defendants use these examples merely to illustrate the type of information they would be required to search for under Plaintiffs' interpretation of the July 6 Order. In doing so, the Cargill Defendants neither admit nor suggest that such information exists.

contemplated by Plaintiffs' interpretation and the scant-to-nonexistent relevance to the issues in this case, Plaintiffs' overbroad reading of the Court's July 6 Order appears to be designed solely to cause the Cargill Defendants to spend excessive amounts of time and money to retrieve it.

Plaintiffs' interpretation of the Court's July 6 Order places a uniquely harsh burden on the Cargill Defendants versus the other Defendants to the litigation. The Cargill Defendants contract with **only** approximately **6%** of the poultry houses in the IRW. (Ex.2: Mann Aff. at ¶ 9.) Yet solely by virtue of the fact that they have corporate affiliates worldwide in a wide variety of industry segments, the Cargill Defendants are being asked to engage in discovery efforts vastly disproportionate to their role as Defendants in this litigation. No other party must go to such great lengths to protect such a proportionally small interest in this litigation.

**B. To the Extent the July 6 Order Requires Production of Documents Related to Land Application of Poultry Litter Globally, this Court Should Modify its Ruling.**

To the extent that the Court's July 6 Order requires the Cargill Defendants to produce documents related to the allegedly detrimental environmental effects of land application of poultry litter **globally**, the Cargill Defendants respectfully request that the Court reconsider and modify its ruling. A motion for reconsideration is not appropriate to revisit issues already addressed or arguments which could have been raised in prior proceedings. See Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000). However, a motion for reconsideration should be considered where (1) there has been an intervening change in the law; (2) new evidence is available; or (3) there is a need to correct clear error or prevent manifest injustice. See id.; Langenfeld v. Bank of Am., 2007 WL 2034366, at \*3 (N.D. Okla. July 9, 2007).

The Court's reconsideration is warranted here for two of these three reasons. First, Plaintiffs have changed their position with respect to the documents they want Cargill to produce, and the Cargill Defendants will soon be able to offer the Court new evidence regarding



the burden that Plaintiffs' new position will place on the Cargill Defendants. At the time of the July 6 Order, Plaintiffs maintained that the Cargill Defendants would not be required to produce documents that were unconnected or irrelevant to the poultry industry or the environmental impacts of land-applied poultry litter. Now, however, Plaintiffs interpret the July 6 Order to require exactly such a production.

In addition, at the time of the Court's July 6 Order, the Cargill Defendants could not provide the Court with concrete numbers regarding the time and money an international production would require. Indeed, the Cargill Defendants would find it difficult to gather this information even now without further guidance from the Court as to the proper parameters for discovery. Nevertheless, using their efforts to produce responsive documents from their domestic facilities as a guide, the Cargill Defendants can estimate the amount of time and effort a global production would involve. The Cargill Defendants spent over two months scheduling and interviewing approximately 80 employees and collecting documents from their domestic poultry production facilities in Arkansas, Virginia, Missouri and Texas, as well as corporate offices in Minnesota and Kansas, only obtaining approximately 16 boxes of information potentially responsive to the Court's July 6 Order (which also includes documents potentially responsive to prior document requests). (Ex. 2: Mann Aff. at ¶¶ 3, 5.) Although the Cargill Defendants have collected most of the documents potentially responsive to Plaintiffs' requests, there are some remaining follow-up tasks related to the document collections in Arkansas, Minnesota, and Wichita that are on-going. (*Id.* at ¶¶ 4, 6). Even at an aggressive pace, the Cargill Defendants do not anticipate that they will complete their review and production of the documents collected from these facilities until mid- to late- October. (*Id.* at ¶ 6). As explained above, there are significant differences between the Cargill Defendants' domestic and

international operations, and environmental conditions, industry practices, laws, and regulations vary greatly between countries. Language barriers, human resource commitment, and sheer financial commitment of a wide-ranging international document search would make even a limited international production extremely burdensome. Thus, if the Cargill Defendants are required to undertake an international search for documents, the time and costs will likely multiply several fold for what will likely be a limited amount of responsive information.

Second, the Court's reconsideration is warranted to prevent manifest injustice. As explained above, a complete production of the documents requested by Plaintiffs from numerous countries and facilities could take months and require vast amounts of both human resources and money. Requiring the Cargill Defendants to proceed with such a time-consuming and expensive search without any indication that the material obtained by it would be germane to the issues in this case would be unjust. It is particularly unreasonable to require the Cargill Defendants to engage in these extraordinary efforts simply because of their global affiliates, which were in no way involved in poultry production in the IRW.

### **CONCLUSION**

Plaintiffs' interpretation of the July 6 Order would require the Cargill Defendants to engage in a time-consuming and enormously expensive search for information that is, at best, tenuously related to the issues in this case. Therefore, the Cargill Defendants respectfully request that the Court clarify that its July 6, 2007 Order requires the Cargill Defendants to produce only documents related to the allegedly detrimental environmental effects of land application of poultry litter in the United States possessed by the named Defendants in this action.

Respectfully submitted,

Rhodes, Hieronymus, Jones, Tucker & Gable,  
PLLC

BY: John H. Tucker (OBA#9110)

John H. Tucker, OBA #9110

Theresa Noble Hill, OBA #19119

100 W. Fifth Street, Suite 400 (74103-4287)

P.O. Box 21100

Tulsa, Oklahoma 74121-1100

Telephone: 918/582-1173

Facsimile: 918/592-3390

And

Delmar R. Ehrich

Bruce Jones

Dara D. Mann

Krisann C. Kleibacker Lee

FAEGRE & BENSON LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

Telephone: 612/766-7000

Facsimile: 612/766-1600

**Attorneys For Cargill, Inc. And Cargill Turkey  
Production LLC**

### CERTIFICATE OF SERVICE

I certify that on the 26<sup>th</sup> day of September, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General  
Kelly Hunter Burch, Assistant Attorney General  
J. Trevor Hammons, Assistant Attorney General  
Robert D. Singletary  
Daniel Lennington, Assistant Attorney General

drew\_edmondson@oag.state.ok.us  
kelly\_burch@oag.state.ok.us  
[trevor\\_hammons@oag.state.ok.us](mailto:trevor_hammons@oag.state.ok.us)  
[Robert\\_singletary@oag.state.ok.us](mailto:Robert_singletary@oag.state.ok.us)  
[Daniel.lennington@oag.ok.gov](mailto:Daniel.lennington@oag.ok.gov)

Douglas Allen Wilson  
Melvin David Riggs  
Richard T. Garren  
Sharon K. Weaver  
Riggs Abney Neal Turpen Orbison & Lewis

doug\_wilson@riggsabney.com  
driggs@riggsabney.com  
rgarren@riggsabney.com  
sweaver@riggsabney.com

Robert Allen Nance  
Dorothy Sharon Gentry  
Riggs Abney

rnance@riggsabney.com  
sgentry@riggsabney.com

J. Randall Miller  
David P. Page  
Louis W. Bullock  
Miller Keffer & Bullock

rmiller@mkblaw.net  
dpage@mkblaw.net  
lbullock@mkblaw.net

William H. Narwold  
Elizabeth C. Ward  
Frederick C. Baker  
Lee M. Heath  
Motley Rice

[bnarwold@motleyrice.com](mailto:bnarwold@motleyrice.com)  
lward@motleyrice.com  
fbaker@motleyrice.com  
[lheath@motleyrice.com](mailto:lheath@motleyrice.com)

#### COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen  
Patrick M. Ryan  
Paula M. Buchwald  
Ryan, Whaley & Coldiron, P.C.

sjantzen@ryanwhaley.com  
pryan@ryanwhaley.com  
pbuchwald@ryanwhaley.com

Mark D. Hopson  
Jay Thomas Jorgensen  
Timothy K. Webster  
Sidley Austin LLP

mhopson@sidley.com  
jjorgensen@sidley.com  
twebster@sidley.com

Robert W. George  
Michael R. Bond  
Kutack Rock LLP

robert.george@kutackrock.com  
michael.bond@kutackrock.com

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.;  
AND COBB-VANTRESS, INC.**

R. Thomas Lay  
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin  
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

**COUNSEL FOR WILLOW BROOK FOODS, INC.**

Robert P. Redemann  
Lawrence W. Zeringue  
David C. Senger  
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net  
lzingue@pmrlaw.net  
dsenger@pmrlaw.net

Robert E. Sanders  
E. Stephen Williams  
Young Williams P.A.

rsanders@youngwilliams.com  
steve.williams@youngwilliams.com

**COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.**

George W. Owens  
Randall E. Rose  
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com  
rer@owenslawfirmmpc.com

James M. Graves  
Gary V. Weeks  
Bassett Law Firm

jgraves@bassettlawfirm.com

**COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.**

John R. Elrod  
Vicki Bronson  
Bruce W. Freeman  
Conner & Winters, LLLP

jelrod@cwlaw.com  
vbronson@cwlaw.com  
bfreeman@cwlaw.com

**COUNSEL FOR SIMMONS FOODS, INC.**

A. Scott McDaniel  
Nicole M. Longwell  
Philip D. Hixon  
Joyce, Paul & McDaniel, PC

[smcdaniel@mhla-law.com](mailto:smcdaniel@mhla-law.com)  
[nlongwell@mhla-law.com](mailto:nlongwell@mhla-law.com)  
[phixon@mhla-law.com](mailto:phixon@mhla-law.com)

Sherry P. Bartley  
Mitchell Williams Selig Gates & Woodyard  
**COUNSEL FOR PETERSON FARMS, INC.**

[sbartley@mws gw.com](mailto:sbartley@mws gw.com)

Michael D. Graves  
Dale Kenyon Williams, Jr.

mgraves@hallestill.com  
kwilliams@hallestill.com

**COUNSEL FOR CERTAIN POULTRY GROWERS**

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert  
Secretary of the Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118  
**COUNSEL FOR PLAINTIFFS**

Thomas C. Green  
Sidley Austin Brown & Wood LLP  
1501 K Street NW  
Washington, DC 20005  
**COUNSEL FOR TYSON FOODS, INC., TYSON  
POULTRY, INC., TYSON CHICKEN, INC.; AND  
COBB-VANTRESS, INC.**

s/ John H. Tucker (OBA #9110)

fb.us.2265097.10